

RELINQUISHMENT AGREEMENT

This Agreement, entered into effective on _____, 2011 is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "CALTRANS," and the

CITY OF SAN JOSE, a municipal corporation of the State of California, referred to herein as "CITY."

RECITALS

1. CALTRANS and CITY, pursuant to Streets and Highways Code sections 73, 382, and 430, are authorized to enter into an Agreement in order to relinquish to CITY portions of State Highways within the CITY's jurisdiction.
2. CALTRANS intends to relinquish to CITY that portion of State Route 82 (SR82) from I-880 to US 101 and that portion of State Route 130 (SR130) from US 101 to CITY limit within the limits of the city of San Jose as shown in Exhibit A, attached to and made a part of this Agreement, referred to hereinafter as "RELINQUISHED FACILITIES." This relinquishment is based on AB1670 Legislation. CITY is willing to accept said RELINQUISHED FACILITIES upon approval by the California Transportation Commission (CTC) and full execution of this Agreement and adoption of a Resolution of Relinquishment and CALTRANS' recording of said Resolution in the County Recorder's Office.
3. CALTRANS and CITY have negotiated an understanding that CITY will accept and assume full maintenance, ownership, responsibility, control and liability in perpetuity over the RELINQUISHED FACILITIES as set forth in this Agreement.
4. The parties hereto intend to define herein the terms and conditions under which RELINQUISHED FACILITIES is to be accomplished.

SECTION I

CITY AGREES:

1. Execution of this Agreement constitutes CITY's waiver of CALTRANS' obligation to provide ninety (90) days prior notice of CALTRANS' "Intention to Relinquish" as set forth in Streets and Highways Code Section 73.
2. To accept ownership, including all of CALTRANS' current operating and maintenance obligations, rights, title and interest in RELINQUISHED FACILITIES upon recordation of the CTC's Resolution of Relinquishment in the County Recorder's Office and to thereafter

operate, maintain, and be liable for RELINQUISHED FACILITIES at no cost to CALTRANS. CITY shall accept RELINQUISHED FACILITIES "as is" without regard to the actual parcel environmental conditions. CITY shall not be liable under this provision for any actions, events, injuries, losses, damages, or otherwise that occurs or arises prior to the date of the recordation of the Resolution of Relinquishment.

3. To accept and preserve all the historic sites in accordance with Exhibit B attached to and made a part of this Agreement.

SECTION II

CALTRANS AGREES:

1. At CITY's request(s), to prepare a memorandum to the appropriate government body or decision-maker to support CITY's request for allocation of Twelve Million Four Hundred Thousand Dollars (\$12,400,000) for the RELINQUISHED FACILITIES as set forth in Section III, Article 4 below.
2. To relinquish, upon the approval of the CTC's Resolution of Relinquishment, the RELINQUISHED FACILITIES.
3. To submit the CTC Resolution of Relinquishment to the County Recorder's Office for recording.
4. To transfer to CITY, within sixty (60) days of the recordation of the CTC's Resolution of Relinquishment, copies of all available CALTRANS records and files for RELINQUISHED FACILITIES, including, but not limited to, plans, survey data and right of way information.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of CALTRANS under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority, and the allocation of any funds by the CTC.
2. Upon recordation of the CTC's Resolution of Relinquishment in the County Recorder's Office, any maintenance agreements that were in existence applicable or relating to the RELINQUISHED FACILITIES are deemed to have been automatically terminated or nullified as of the date of that recordation. Additionally, upon recordation of the CTC's Resolution of Relinquishment in the County Recorder's Office, any maintenance agreements applicable or relating to traffic signals and utility accounts applicable or relating to the RELINQUISHED FACILITIES shall be automatically terminated or nullified as of the date of recordation.
3. CALTRANS reserves the right to enter RELINQUISHED FACILITIES through the appropriate CITY permit process, at no cost to CALTRANS, to operate, maintain, add,

remove, or modify CALTRANS' facilities, if any.

4. In consideration for the CITY accepting the RELINQUISHED FACILITIES, CALTRANS agrees to transfer to CITY up to \$12,410,000 of federal programming authority from programming authority set aside for CALTRANS projects. CALTRANS shall notify the Metropolitan Transportation Commission (MTC), in writing, of the assignment of increased programming authority. The additional federal programming authority for the CITY is to be used to program a project or projects determined by CITY in MTC's Federal Transportation Improvement Program (FTIP) prior to the authorization and obligation of federal funds. CALTRANS shall transfer federal funds from funds reserved for CALTRANS projects, not to exceed \$12,410,000, for this project or projects when funds are requested by CITY.
5. CITY shall program up to \$12,410,000 in federal funds towards a roadway rehabilitation project or projects on RELINQUISHED FACILITIES. The CITY shall be responsible for implementation of the project in accordance with all federal and State provisions and requirements, including the Caltrans Local Assistance Procedures Manual, specified in the Caltrans Master Administering Agency – State Federal-aid Agreement previously entered into by the CITY and STATE and the project specific Program Supplement Agreement.
6. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY and/or its agents under or in connection with any work, authority or jurisdiction conferred upon CITY under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless CALTRANS and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth hereunder, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY and/or its agents under this Agreement.
7. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under or in connection with any work, authority or jurisdiction conferred upon CALTRANS under this Agreement. It is understood and agreed that CALTRANS shall fully defend, indemnify and save harmless CITY and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth hereunder, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under this Agreement.
8. No alteration of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
9. This Agreement shall terminate upon recordation of the CTC's Resolution of Relinquishment for RELINQUISHED FACILITIES in the County Recorder's Office, except for those provisions which relate to Section III, Article 4, indemnification, ownership, operation, and maintenance, which shall remain in effect until terminated or modified in writing by mutual agreement.

SIGNATURES

Parties declare that:

1. Each party is an authorized legal entity under California state law.
2. Each party has the authority to enter into this agreement.
3. The people signing this agreement have the authority to do so on behalf of their public agencies

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

CITY OF SAN JOSE

By: _____
Deputy District Director

By: _____
DENNIS D. HAWKINS
City Clerk

APPROVED AS TO FORM AND PROCEDURE: APPROVED AS TO FORM AND PROCEDURE:

Attorney
Department of Transportation

By: _____
JOHNNY V. PHAN
Deputy City Attorney

CERTIFIED AS TO FUNDS:

District Budget Manager

CERTIFIED AS TO FINANCIAL TERMS AND
POLICIES:

Accounting Administrator

DRAFT

EXHIBIT A

Vicinity Map

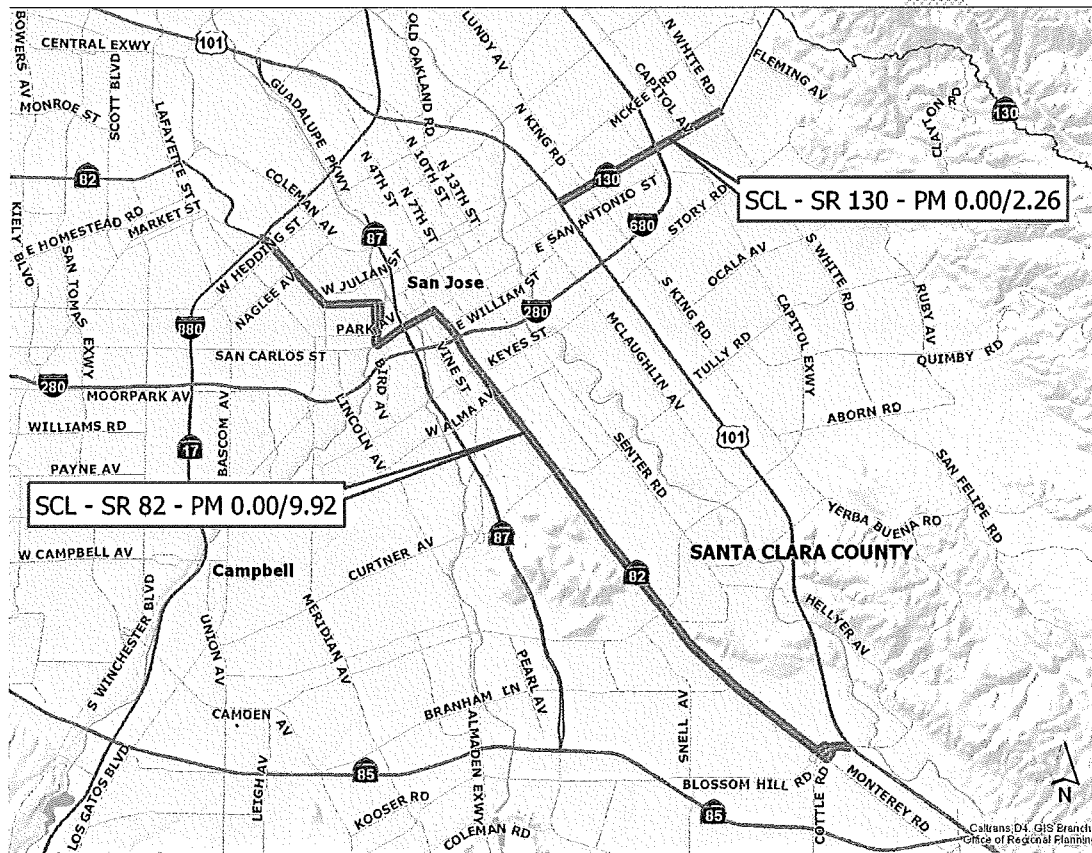


EXHIBIT B

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE
REGARDING THE RELINQUISHMENT OF A PORTION OF STATE ROUTES 82 AND 130

WHEREAS, the California Department of Transportation (STATE) and the City of San Jose (CITY), pursuant to California Streets and Highways Code Section 73, have entered into a Cooperative Agreement providing for the relinquishment to the CITY a portion of State Highway 82 (SR 82) and State Highway 130 (SR 130) within the City of San Jose.

WHEREAS, the STATE desires to relinquish to the CITY those portions of SR-82, Post Mile (PM) 0.00 to PM 9.92 and SR-130 PM 0.00 to PM 2.26, and the CITY is interested in accepting said relinquishment.

WHEREAS, the STATE has completed a Historical Resources Compliance Report (HRCR), in compliance with the provisions of the California Environmental Quality Act (CEQA) and the California Public Resources Code (PRC), Section 5024.

WHEREAS, the HRCR identified two historical resources in the City of San Jose as listed in the National Register of Historic Places (NRHP) and the California Register of Historical Resources (CRHR), and are a historical resources for purposes of CEQA, CA-SCL-128/H and the San Jose Underpass (Bridge Number 37-0045), CA-SCL-128/H being determined eligible for and the San Jose Underpass being listed as a contributor to the San Jose Southern Pacific Depot in the NRHP and the CRHR and are both historical resources for the purposes of CEQA.

WHEREAS, the San Jose Municipal Code provides for the designation of local historical resources that meet the CITY criteria for Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of an Historical Nature.

WHEREAS, STATE has requested said resources be identified in the San Jose Municipal Code under Title 13 Streets, Sidewalks and Public Places, Chapter 13.48 Historic Preservation, Part 2 Designation, Section 13.48.110 Landmarks and 13.48.120 Historic Districts, as a locally designated historic district as part of relinquishment.

WHEREAS, the CITY will maintain said historical resources in accordance with Title 13 Streets, Sidewalks and Public Places, Chapter 13.48 Historic Preservation and Title 17 Chapter 17.70 Application of State Historical Building Code to Historic Landmarks of the San Jose Municipal Code upon relinquishment of the historical resources by the STATE.

WHEREAS, the CITY will manage said historical resources in a manner consistent with Title 13 Streets, Sidewalks and Public Places, Chapter 13.48 Historic Preservation of the San Jose Municipal Code and will require any maintenance, repairs, alterations, rehabilitation, reconstruction or new work on the resource be performed in accordance with the Secretary of the

Interior's *Standards for the Treatment of Historic Properties* and the California Historical Building Code (California Health and Safety Code, Division 13, Part 2.7, Sections 18950-18961), as amended, upon relinquishment of the resource by the STATE.

NOW, THEREFORE, incorporating the above recitals herein, City Council for the City of San Jose hereby accepts said relinquishment of those portions of SR-82, PM 0.00 to PM 9.92 and SR-130 PM 0.00 to PM 2.26 and directs:

1. The Director of Planning, Building and Code Enforcement is hereby authorized and directed to complete the necessary application(s) and documentation for designation, CA-SCL-128/H and the San Jose Underpass (Bridge Number 37-0045) as a historic district for submittal to the Historic Landmarks Commission and City Council so that designation proceedings for the above-named resource can be completed in a timely and expedited manner.
2. That this resolution shall take effect immediately upon its adoption.

DRAFT